

HIGH COURT OF JUDICATURE AT BILASPUR, CHHATTISGARH

Criminal Appeal No. 993 OF 1994

Parikshit S/o. Sadharam Khadia
Aged about 40 years,
Resident of Pandri Pani,
Police Station :Raigarh,
District : Raigarh

Vs.

State of M.P.
Through : Station House Officer,
Police Station :Kotwali
District :Raigarh

JUDGEMENT FOR CONSIDERATION

HON'BLE SHRI L.C.BHADOO .J.

g agree.

Sd/-
DHIRENDRA MISHRA
Judge

Sd/-
L.C.BHADOO
Judge

24/01/2006

POST FOR JUDGMENT ON 24th JANUARY 2006

Sd/-
Dhirendra Mishra
Judge

**DIVISION BENCH: HON'BLE SHRI L.C.BHADOO
& HON'BLE SHRI DHIRENDRA MISHRA, JJ**

CRIMINAL APPEAL NO.993/1994

Appellant : Parikshit

Vs.

Respondent : State of Madhya Pradesh

Shri Abhijeet Sarkar, learned counsel for the appellant.

Shri U.N.S.Deo, learned Additional Public Prosecutor with Shri Alok Bakshi, learned G.A. for the respondent/State.

J U D G M E N T
(Delivered on 24-01-2006)

Dhirendra Mishra, J

The appellant has preferred this appeal under Section 374 (2) of the Cr.P.C. against the judgment dated 30.06.94 passed by learned Additional Sessions Judge, Raigarh convicting him under Section 302 of the IPC for committing the murder of Mankunwar Bai, and sentencing to undergo imprisonment for life.

- 2) Case of the prosecution is that on 30.03.1993 at about 4.30 p.m. aunt of the complainant Bhubaneshwar namely Mankunwar Bai and the appellant entered into some verbal dual on account of walking on the way. However on the mediation of the complainant accused/appellant went away. Sometime thereafter while the deceased was going towards a shop, the appellant assaulted her several times with wooden rafter (paati) of the cot on her head, hands and legs as a result of which she fell down. The incident was seen by complainant Bhubaneshwar, Jyoti Kumar P.W.5 and one Duti Bai. Jyoti Kumar and the complainant tried to catch hold of the appellant but the accused/appellant ran away and entered the house of one Kaling Khadia. While Mankunwar Bai was being taken to the police station for lodging the report by the villagers in unconscious state, she

succumbed to the injuries on the way near Bhagwanpur village. The complainant gave mere intimation of Ex.P.1A in police station Kotwali Raigarh on the basis of which Crime No. 152/93 was registered vide Ex.P.1 for the offence under Section 302 of the IPC. During investigation inquest report P-3 was prepared. Thereafter the dead body was sent for autopsy on the following day. Dr. Ashok Kumar Jain, P.W.11 conducted the post mortem and submitted the report P-10. He opined that cause of death was shock and hemorrhage due to fracture of skull bone and excessive loss of blood and the death was homicidal in nature. Spot map (P-11) was prepared by Halka Patwari. Certain articles and plain and blood stained earth were seized from the spot vide seizure memo P-4. Memorandum of the appellant was recorded vide Ex.P.7 on 01/04/93 and at the instance of the appellant wooden rafter of the cot (paati) was recovered vide Ex.P.6. Wearing apparels like sari, blouse and hair of the deceased were also seized vide Ex.P.8. On enquiry from the investigating officer the doctor as per Ex.P.11 opined that shirt, underwear and rafter of the cot (paati) did not contain any blood stains. However he advised the chemical examination of the earth collected from the place of incident for ascertaining whether it contains blood or not. After completing investigation charge sheet was filed against the appellant in the Court of Judicial Magistrate First Class, Raigarh who in turn committed the case to the Session Judge, Raigarh from where the Additional Session Judge received the case on transfer for trial. Charge under section 302 of the IPC was framed. However, the appellant abjured the guilt.

- 3) During trial the prosecution examined 16 witnesses in all to establish its case. Statement of accused was also recorded under Section 313 of the Cr.P.C. in which the appellant denied the circumstances appearing against him in the prosecution evidence. One Karmu Ram D.W.1 was examined by the appellant in his defence.

- 4) Learned trial Court after hearing the arguments of both the sides convicted and sentenced the appellant as described above.
- 5) It is not in dispute that death of deceased Mankunwar Bai was homicidal in nature as from the evidence of P.W.11 Dr. Ashok Kumar Jain it is established that the deceased died as a result of injuries caused to her which were sufficient to cause death in the ordinary course of nature and the same were caused voluntarily. Now the only question for adjudication of this appeal is whether the trial Court was justified in arriving at the conclusion that the appellant inflicted the injuries with an intention to cause death of the deceased.
- 6) Learned trial Court has based its judgment on the evidence of P.W.5 Jyoti Kumar, the son of the deceased considering him to be the eyewitness and further considering that the evidence of Jyoti Kumar is corroborated by the evidence of independent witness P.W.4 Paalu Ram and also by the promptly lodged First Information Report.
- 7) Learned counsel for the accused/appellant submits that the evidence adduced by the prosecution is unreliable and untrustworthy as there are material contradictions therein. The trial Court ought to have scrutinized the evidence of P.W.5 Jyoti Kumar with great circumspection as he is the highly interested witness being the son of the deceased but even then ignoring the material discrepancies regarding the number of assaults given by the appellant the trial Court has acted upon the evidence of the interested witness. It is further argued that the trial Court has also committed an illegality by holding the appellant guilty under Section 302 of the IPC and in any case looking to the fact that weapon of offence was rafter of the cot (paati) and not any conventional weapon and therefore the offence alleged against the appellant does not travel beyond Section 304-II of the IPC.

- 8) We have heard learned counsel for the parties and gone through the evidence available on record.
- 9) P.W.1 the complainant has stated in his examination in chief that he saw the accused/appellant assaulting the deceased from a distance and thereafter he reached the spot and snatched the wooden rafter and then the appellant fled away from the scene. However in paragraph seven of the cross examination he has stated that he did not see the incident. Similarly P.W.7 Bachan Lal has also stated that he had seen the incident but his name does not figure in the FIR. The other so called eyewitnesses namely Paltu Ram P.W.3, Paalu Ram P.W.4, Sanat Kumar P.W.14 and Eeb Lal P.W.6 have supported the statement of the complainant that the appellant was assaulting the deceased as a result of which she fell down. P.W.5 Jyoti Kumar has stated that he was in his house on the date of incident. His mother went towards the shop of Sanath Kumar and thereafter he heard some noise near a Bargad Square and saw that the appellant was assaulting his mother Mankunwar Bai with wooden rafter. Blood started oozing from her head and that time Eeb Lal was also present there. His father Paltu Ram was also present in the shop of Kala Bai who reached there subsequently. However in the cross examination there is some discrepancy regarding the number of blows as in the diary statement only two-three assaults are attributed to the appellant but in the Court statement they have been exaggerated as seven and eight. He denied the suggestion that the quarrel was between the accused and this witness and his mother came there to mediate and that she had fallen down on a stone. Thus from the evidence of this witness it is established that he was present on the spot. The name of the present witness also figures in the FIR that he had witnessed the incident, therefore according to our opinion that Court below had not committed any illegality and material irregularity in convicting the appellant on the basis of evidence of P.W.5 Jyoti Kumar. Though the complainant P.W.1 has accepted the suggestion of the counsel for the defence that he did not see the incident

yet the presence of Jyoti Kumar on the place of incident is corroborated by this witness also as even the defence does not dispute his presence. So far as defence of the appellant that in fact Paltu Ram, the husband of the deceased gave two-three blows to the deceased by the wooden rafter of the cot (paati) is concerned, the Court below has rightly disbelieved this defence on the ground that this suggestion was never put to the prosecution witness in the cross examination and altogether a new defence was taken by the appellant while entering into the defence. The other submission of the appellant that there is absence of motive and in the light of the fact that weapon of the offence is rafter of the cot (paati), the intention to cause death cannot be inferred. From the perusal of the post mortem report it is clear that the deceased sustained three grievous injuries on her head and the same have been caused by a heavy rafter of the cot (paati) and therefore on the basis of the injuries caused to the deceased as mentioned in the post mortem report the trial Court has rightly arrived at the conclusion that intention of causing death can be inferred.

- 10) On the basis of aforesaid discussion, we are of the opinion that the impugned judgment of conviction and sentence passed by the trial Court is based on evidence and material available on record. There is no infirmity or illegality in it which calls for any interference by this Court. Accordingly the appeal being devoid of substance is hereby dismissed.

Sd/-
L.C.BHADOO
Judge

Sd/-
Dhirendra Mishra
Judge

YOGENDRA
SINGH
KANWAR

Digitally signed
by YOGENDRA
SINGH
KANWAR
Date:
2025.02.05
10:27:44 +0530